

North Smithfield Zoning Board of Review

October 21, 2008, 7:00 p.m.

Primrose Fire Station

1470 Providence Pike, North Smithfield

The Chair called the meeting to order at 7:02 pm.

I. Roll Call

Present: Steven Scarpelli, Bill Juhr, Vin Marcantonio, Guy Denizard, Stephen Kearns, Mario DiNunzio. Also present were Building Official Bob Benoit, Assistant Town Solicitor Bob Rossi, and stenographer Shelly Deming from Allied Court Reporters.

The Chair disclosed that no compensation or pension credits are received by the members for their service on the Zoning Board.

II. Approval of Minutes—October 8, 2008

Mr. Scarpelli made a motion to approve the minutes of October 8, 2008. Mr. Denizard seconded the motion, with all in favor.

III. Continued application of Joe Jenks (owner Mary Zurowski), requesting to construct a building to be used as a religious institution, which requires a Special Use Permit, per section 5.4.4, subsection 5. Locus is 1054 Victory Highway, Plat 1, Lots 141 & 151.

The Chair stated that the Board had received a request from the applicant's attorney to continue the application because they need more time to prepare some materials. He stated that the hearing will be continued to November 19, 2008 at 7:00 pm at Kendall Dean, unless posted otherwise.

IV. Appeal by John Boucher for Laurelwood, LLC, of Building Official's decision of assessing impact fees for construction of new single-family dwellings. Locus is 170 Providence Pike, Plat 5, Lot 430.

Attorney Michael Kelly was present for the applicant. The applicant is appealing the assessment of impact fee for Units 105 and 106, in the age-restricted Laurelwood development. The Building Official assessed impact fees of \$5,231 for each unit in May 2008. Mr. Kelly stated that he had filed a memorandum with attachments and asked the Board to make this document part of the record, along with copy of application. Mr. Juhr stated that the Board had just received copies of the memorandum on Saturday (October 18, 2008) and that the assistant solicitor did not receive copies. Mr. Juhr stated that he did not feel the Board was given sufficient time to review the material and added that the Board usually requires at least 10 days before a hearing for receipt of materials. Mr. Kelly said he did not know about a 10-day requirement. Mr. Juhr asked if Mr. Rossi could get copies of the materials, and the applicant submitted copies to Mr. Rossi.

The following exhibits were marked and entered into the record:

P1) Alternative Impact Fee Calculation, dated October 16, 2008, prepared by Larry Koff & Associates.

P2) Memorandum of Law in Support of Appeal, with attachments A-E.

P3) Memorandum on North Smithfield's Impact Fees & Growth Cap Ordinances, dated June 4, 2008, prepared by JDL Enterprises.

P4) Qualifications of Larry Koff & Associates.

P5) Application materials submitted to Building Official for Zoning Board hearing.

P6) Copy of letter regarding payment of impact fees for Unit 106 of the Laurelwood development, dated September 9, 2008, written by John Boucher.

P7) Copy of letter regarding payment of impact fees for Unit 105 of the Laurelwood development, dated October 14, 2008, written by John Boucher.

P8) Copy of the Town of North Smithfield Planning Board minutes of December 7, 2000.

Mr. Kelly stated that as a provision of the ordinance, fees were assessed for units 105 and 106. These fees were paid under protest, copies of the checks are included with P2 and the letters marked P6 and P7 from John Boucher state that the applicant disagreed with the methodology of fee calculations. The applicant had Joe Lombardo of JDL Enterprises and Larry Koff prepare reports, stating why age-restricted and multi-family units both have less impact on public schools, and also questioned school population projections. The

conclusions of these reports greatly reduced impact fees for these units. Mr. Kelly stated that Mr. Koff and Roberta Cameron are present at the meeting to testify. Applicant John Boucher was sworn in by the stenographer. He clarified for the Board that REPM is the developer of the property and Laurelwood, LLC is the owner. Mr. Boucher stated that the development is an active adult community (age 55+), with no children. He stated that the development was approved by both the Town Council through a zone change, then the Planning Board. According to the Planning Board decision, the age restriction of 55+ applied to 162 units approved. At the present time, 49 units are currently occupied and 92 are constructed. There are no children in any of the units. Mr. Kearns asked if it would be possible for a grandchild to possibly live there. Mr. Boucher stated that it is not allowed and is specifically prohibited in the development. Mr. Kearns asked if the Board could get a copy of the rules that show this prohibition. Mr. Boucher said he would get a copy to submit to the Board. He added that children can visit, but for a maximum of 14 days per year.

Larry Koff was sworn in by the stenographer. He gave a summary of his firm's qualifications. It is a 3-person firm, in business for 13 years, with all AICP members, and 40 years planning experience. Mr. Rossi stated that it will be difficult for him to act as an advisor to the Board since he has first seen the report tonight. Mr. Juhr added that he only got his on Saturday, and Mr. Denizard did not receive his. As a result, Mr. Juhr stated that he feels they did not have enough time

to adequately review the materials. Mr. Kelly stated that there is nothing in state law about a specific time frame for getting materials to the Board, but said the Board could take time to review the materials before questioning the applicant. Mr. Rossi stated that it is unreasonable to get information with such short notice. He said that he just received 50-70 pages of technical information tonight. Mr. Juhr added that Mr. Denizard has received no material and he's a voting member. Mr. Kelly asked the Board to hear the testimony and see if they have questions. Mr. Kelly stated that there is an alternate here, and it is not the applicant's fault that Mr. Denizard wasn't at home when the material was delivered. Mr. Denizard responded that he should not have to wait home in case something is delivered. Mr. Scarpelli questioned the materials were not distributed through the Building Official's office. Mr. Rossi stated that the application was filed in June, yet the Board was given only days to review the information. Mr. Kelly stated that the assistant solicitor is not a member of Board, so it is not necessary to send him copies of the materials. Mr. DiNunzio suggested that the Board hear what the applicants have to say. The Board agreed to hear Mr. Koff's testimony.

Mr. Koff stated that he had 2 major concerns with the town's Needs Assessment & Impact Fee Schedule, as outlined on page 2 of P1. The concerns are: 1) The town's impact fee did not account for the number of school children from different housing types, and 2) The town's fee did not, as required by state law, account for future

contributions that the development will make toward paying for these facilities through property taxes. Mr. Scarpelli asked Mr. Koff to please explain the second concern. Mr. Koff stated that he will go through the details later in the presentation. Also referring to page 2 of P1, Mr. Koff explained the different methodology his firm used that he feels results in a fair and proportionate fee calculation. The methodology used is explained as: 1) planned capacity is used to determine per capita cost of new facilities, 2) the number of students and new residents is calculated for different housing types, 3) new development is only asked to contribute the share of the cost associated with the number of people they add. Current town residents cover the balance of the cost, 4) the impact fee does not cover the cost of debt service since it enables prepayment on principal, and 5) the present value of estimate future property tax payment for these improvements (calculated using the principal payments shown in the town's debt service schedule) is subtracted from the cost generated by each household.

The other points made in Mr. Koff's Alternate Impact Fee Calculation are: 1) Using the school cost estimate of \$30M that includes only Phase 1, as had been used in the town's impact fee schedule, the resulting school impact fee for age restricted housing and condominiums is \$0, and approximately \$3,000 for single family homes, 2) the impact fee should probably include a portion of Phase II costs as well, since Phase II also increases school capacity. This brings the fee for single family homes to \$4,800. Other types of

housing are still at \$0, 3) Mr. Koff estimates a fee for open space and recreation ranging from \$133 to \$479, depending on the housing type, keeping the town's projected \$3.2 M total cost, and 4) The impact fee calculated in the Needs Assessment was \$4, 539 for school facilities and \$692 for open space for all types of homes. Mr. Koff then referred the Board to the Summary Tables included in the report (P1).

Roberta Cameron, also of Larry Koff & Associates was sworn in by the court stenographer. Ms. Cameron went over the conclusions of their report (P1) in detail, including the Summary Tables and a review of the town's Needs Assessment methodology (including school facility costs, open space and recreation needs, and the concerns of her firm with section 4, Proposed Impact Fee) She detailed the concern her firm has with "double taxation." Ms. Cameron said that the Rhode Island development Impact Fee Act specifies that impact fee calculations must take into consideration the extent to which new development is required to contribute to the cost of system improvements in the future. Outside of the revenues raised from impact fees, the town's debt service costs are paid for through the allocation of property taxes in to the general fund. New development will contribute to this account through property taxes. The contribution toward the cost of capital improvements through future property tax payments must be credited in order that new development is not subject to a double tax burden.

Ms. Cameron then reviewed in detail the firm's recommended

alternative calculation, which is found on p. 8-11 of P1. The conclusion of their report is that the impact fee for age-restricted housing should be a total of \$133 (\$0 for education and \$133 for open space/recreation). In the report's summary, it states that the suggested alternative methods highlights two factors that were not included in the town's calculations: impact fees for different types of housing should be differentiated to account for variations in anticipated household size and composition, and 2) the future property tax payments for principal on the capital improvement bonds be subtracted from the impact fees owed in order to avoid double taxation.

The Chair referring to P1, p. 9, Table 3, asked if multi-family rentals are included with multi-family condos (owner occupied). Ms. Cameron responded that the number of school children per rental units is slightly lower than the number for owner-occupied units.

Mr. Kearns asked if there is anyone from town available to explain their calculation. He stated that it would be helpful to the Board if the person who wrote this ordinance will come before Board.

Mr. Kelly stated that he had no further witnesses this evening, but asked to reserve the right to present further testimony if more information is presented by the town.

Mr. Kearns asked if Ms. Cameron had analyzed other types of impacts

to the town, such as using the school buildings for activities other than the education of children (uses for the broad spectrum of the town.) He asked about impact fees associated with things such as police and fire department buildings and vehicles. Mr. Scarpelli also questioned impact from other needs (such as the fire department) and asked if that is included as part of the needs assessment. Ms. Cameron stated that she used the town's own projections, which included none for other departments. She based her report on impacts to the extent that town has identified.

Mr. DiNunzio asked Mr. Kelly if he could reference a state law that exempts age restricted developments from impact fees. Mr. Kelly stated that there is no law, as there have been no cases in Rhode Island, due to the fact that this is a relatively new statute.

Mr. Kearns stated that he does not feel comfortable making a decision without hearing how the town assessed this fee. The Chair stated that he will ask Mr. Teitz and Mr. Shamoon, consultants to the town who helped write the Impact Fee Schedule, to come to the meeting on November 19. Mr. Kearns asked if it is the Town Council who deemed who pays the fees and stated that a quick read of the ordinance leads him to believe that the project should determine the fee. He suggested that the Board talk to someone from the Town Council to see why no exemptions were written into the ordinance. Mr. Juhr requested a memo of law from the assistant solicitor, detailing the decision from the Town on how fees can be calculated.

Mr. Rossi said he will look at it and get back to the Board.

Mr. Kearns made a motion that the Chair will ask Mr. Teitz and Mr. Shamoon to address the Board at the next meeting. Mr. Denizard seconded the motion, with all in favor. Mr. Scarpelli made a motion to continue the hearing to November 19, 2008 at Kendall Dean. The Chair seconded the motion, with all in favor.

Mr. Scarpelli made a motion to adjourn at 8:29 pm. Mr. Kearns seconded the motion, with all in favor.